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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

13 CR 811 (ALC)

6 MARTIN AVALO, ALVARADO
7 DOMINGUEZ, EDWIN ARAUJO,
8 GUILLEMO ARAUJO, MIGUEL
9 ARAUJO and BRYAN ALTAGRACIA,

10 Defendants.
11 -----x
12

13 New York, N.Y.
14 May 28, 2014
15 10:30 a.m.

16 Before:

17 HON. ANDREW L. CARTER,

18 District Judge

19 APPEARANCES

20 PREET BHARARA

21 United States Attorney for the
22 Southern District of New York

JASON A. MASIMORE

Assistant United States Attorney

DAVID S. GREENFIELD, ESQ.

Attorney for Defendant M. Avalo

IRA LONDON, ESQ.

Attorney for Defendant A. Dominguez

WILLIAM STAMPUR, ESQ.

Attorney for Defendants E. Araujo, M. Araujo, B. Altagracia

JAMIE BAGLIEBTER, ESQ.

Attorney for Defendant G. Araujo

Also present: Emma Greenwood, Discovery Coordinator

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1 (In open court; case called)

2 THE DEPUTY CLERK: Counsel, please state your
3 appearance for the record.

4 MR. MASIMORE: Jason Masimore for the government.

5 THE DEPUTY CLERK: For the defendants.

6 MR. STAMPUR: Good morning, Judge. William J. Stampur
7 for Edwin Araujo, who just raised his hand. He is in the jury
8 box.

9 I am also standing in, your Honor, for two
10 codefendants who actually out on bail. Miguel Araujo just
11 raised his right hand and Bryan Altagracia. Mr. Epstein
12 represents Miguel Araujo, and Mr. Altagracia's lawyer Mr.
13 Watters is in the middle of a homicide trial Bronx County.

14 MS. BAGLIEBTER: Good morning, your Honor. Jamie
15 Bagliebter representing Guillermo Araujo, second closest to the
16 bench.

17 MS. GREENWOOD: Good morning, your Honor. Emma
18 Greenwood coordinator discovery attorney.

19 MR. LONDON: Good morning, your Honor. Ira London for
20 Alvarado Dominguez, who is in the jury box on the far right.

21 MR. GREENFIELD: Good morning, your Honor. David
22 Greenfield representing Martin Avalo, who is raising his hand.

23 THE COURT: Good morning everyone. Let's check in and
24 get an update on the status of discovery in this case.

25 Where are we?

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1 MR. MASIMORE: Yes, your Honor. Since the
2 government's last letter we have been pulling together
3 additional materials. For example, we have been receiving
4 certified -- may be sit down to be closer to the mic?

5 THE COURT: Certainly.

6 MR. MASIMORE: We received certified DNA files from
7 the Office of the Medical Examiner. We have gone through now
8 and redacted the portions of those that need to be redacted as
9 we get them on a rolling basis. I now have a few thousand
10 pages that I just Bates stamped last night that I will be able
11 to include in the next production.

12 Additionally, we have other materials. For example,
13 Edwin Araujo at his apartment had a DVR system, a digital video
14 recorder surveillance system of his own. That was seized and
15 searched pursuant to the search warrant at the time of the
16 takedown. That contains a lot of footage that needs to be
17 produced and we have a hard drive with some of that material on
18 it. We'll certainly make available the full recording. That
19 type of evidence has video evidence of certain of the
20 defendants inside that apartment and then leaving during
21 burglaries and then coming back and wearing similar clothing to
22 people who were on the video surveillance at the various
23 burglaries.

24 We also have historical cell site information that has
25 been coming in as we made applications. I have a stack, I

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would say, a quarter inch to a half inch thick of some of the newer applications to turn over to defense counsel. It is of the same nature of other applications that have been made in the case. It not of a different type.

We also have various insurance documents, some additional surveillance video on different dates and we have telephone subpoena returns.

There is a fairly large volume of materials that we have been continuing to collect, but it is not the same degree as what has already been produced. We have discussed with defense counsel about whether to produce things on a strict rolling basis. That is, when it comes to my desk get it out or whether we should keep it and manage it into groups so it is easier to manage. As I understand, keeping it and producing it in a bigger bulk group is what the defense would like because it makes it easier to keep track of it and to review it and to make it available to their clients.

The telephone subpoena returns, they come to us produced in various formats from the phone companies and I inquired with the defense as to whether they would just like that mega data so they can get it quicker or whether they would rather have us send it out to a vendor to have it Bates stamped so they could keep track of it. It doesn't take a long time, but takes longer than my copying the lists and sending them over. They indicated they prefer to receive the Bates version.

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1 We also have a large, I would say not larger than the
2 typical case, volume of recorded prison calls made while the
3 defendants have been in as well as their e-mails. One thing I
4 did want to ask the Court about, my inclination had been to
5 make individual productions to each of the defendants rather
6 than making available all of each other's calls to each other.
7 I envision a scenario where as we continue to review those
8 calls and get closer to any trial, where some comment that is
9 made during a call may be relevant to the case and we may want
10 to put it in. What I would propose to your Honor for your
11 Honor's consideration is whether as we get closer and we start
12 identifying calls that may be relevant that we include that in
13 sort of a rolling discovery as we get closer, rather than
14 having a blanket production, which I think given certain
15 tensions in the case it is probably not a great idea to have
16 everybody listening to each other's calls in this particular
17 case.

18 Also, I had mentioned in the letter, my last letter to
19 the Court and to the defendants, that we had additional GPS
20 tracking data. That is all collected now. What I propose is
21 putting this all together in coordination with Ms. Greenwood
22 and getting to the defense as soon as possible so they can
23 conduct an additional review. So I think in terms of what
24 needs to be reviewed for the defense to adequately prepare for
25 trial and/or continuing negotiations with the government, these

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1 materials would need to be reviewed and that make take some
2 time.

3 In terms of motions my thought is the additional
4 applications that I intend to present to them since they are of
5 the same type and nature, I don't think it necessarily has much
6 of an impact of what, if any, motions need to be made.

7 The last thing I wanted to bring up would be cell
8 phone contents. We got search warrants for various locations
9 that included the ability to search cell phones. We
10 additionally sought permission for a new warrant on various
11 phones that were seized. We have the contents of those cell
12 phones now. They have been analyzed and dumped. What I would
13 propose producing to defense in the first instance, or at least
14 making available, would be the analytic reports rather than the
15 full contents at least for distribution because in many cases
16 these cell phones or lap tops or other electronic media that
17 have been searched contain inappropriate materials, videos,
18 photographs, etc. We certainly would be willing to make
19 available for inspection whatever the defense would want to
20 look at; but in terms of disseminating it and in terms of
21 getting it to the defendants so they can review it, those
22 reports contain a lot of information and that is probably in my
23 view I would suggest the best way to go about that.

24 We would anticipate lastly in the not too distant
25 future applying for additional search warrants to search phones

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1 that were obtained during the arrests. Those phones have been
2 in the continuous possession and custody and control of law
3 enforcement and we've been focusing on discovery and getting
4 the materials together. Certainly those phones are vouchered.
5 Defense has been able and can inspect them at any time. I
6 wanted to flag that issue. We would anticipate producing that
7 in the same manner. That is, making available whatever
8 analytic reports are prepared once we obtain permission to
9 search those particular phones that weren't covered by a
10 previous premise warrants.

11 THE COURT: Thank you. So when will this production
12 of discovery be complete?

13 MR. MASIMORE: Right now I believe as of yesterday I
14 am in possession of this full amount. I would estimate that it
15 would take the remainder of this week and two additional weeks
16 to prepare that in a manner to get it out, including I think
17 Bates stamping telephone subpoena returns. I don't anticipate
18 it taking longer than that. Again, some of it I can make
19 available very quickly. Like GPS data, there is really no way
20 to Bates stamp that. There are portions that I can make
21 available quicker; but as I understand it, and certainly I am
22 open to suggestion, I think the defendants want it all at one
23 time because it makes it easier.

24 THE COURT: Let me hear from Ms. Greenwood.

25 MS. GREENWOOD: Your Honor, everything that the

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1 government has briefed today has been distributed to counsel
2 with the exception of getting to me a hard drive and I
3 coordinated with him and expect to get that within the week.

4 The last production was quite voluminous as was
5 discussed at the last conference. It took quite a bit of time
6 for the data to transfer to all the drives for counsel. They
7 were distributed in the first and second weeks in May. I
8 wanted to make clear that though the production was produced in
9 April, mid-April, counsel has only had a couple weeks to review
10 the materials.

11 As far as any outstanding issues, one issue that I
12 have learned of in the last day or two is with client review of
13 the facilities. Apparently the clients are now allowed only
14 two hours or so at both the MCC and MDC to review the hard
15 drives that have been provided to the facilities. I discussed
16 this with AUSA Masimore this morning. Our plan is for me to
17 call the facilities and request additional time and see how
18 that works. And if that doesn't resolve the issue, then I will
19 contact his office and see if they can intervene. Unless the
20 Court has another suggestion, I think that might be the best.

21 MR. STAMPUR: It's two hours a week.

22 MS. GREENWOOD: I am actually a little unclear about
23 exactly how much time clients are currently allowed. Two hours
24 a week counsel is telling me now. I thought it was two hours a
25 day. Os obviously we need to resolve the issue of not enough

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1 time for clients to review the voluminous materials on the hard
2 drives. I think we have a plan to begin to address that.

3 Beyond that as AUSA Masimore just mentioned, I think
4 it makes sense to have the government provide Bates stamps on
5 materials as much as possible to help with the rather
6 tremendous volume of materials. My office of course will
7 process anything that comes in on a rolling basis. Other than
8 that, I don't have too much else to address with the Court
9 today.

10 THE COURT: Thank you. So these materials that have
11 been produced are available at the MCC and MDC for the
12 defendants to review them.

13 MS. GREENWOOD: Yes, your Honor.

14 THE COURT: There was some mention before the last
15 time about some possible solutions to the issues at the
16 facilities regarding iPods. What has happened with that?

17 THE DEFENDANT: Well regarding iPods, I have not
18 approached the either facilities about providing iPods for
19 audio. I have generally spoken with each of the facilities.
20 They are not inclined to allow iPods generally on any case. I
21 actually have not had the occasion in this district to provide
22 iPods to any clients on any case that I have been appointed to.
23 I have on other cases in other districts.

24 MR. MASIMORE: Your Honor, if I may. Just on the iPod
25 issue, I have a case I think is still some pending before Judge

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1 Cote with 49 defendants and massive discovery. IPods were made
2 available. I can speak with defense about perhaps a way to do
3 this. We've done it in the past and we may be able to do
4 something like this. It wouldn't be conducive to reviewing
5 historical cell sites or GPS, but to the extent there was a
6 wire tap in this case with some audio and video.

7 THE COURT: Both facilities?

8 MR. MASIMORE: It was both MDC and MCC.

9 THE COURT: Thank you. Let me find out from the
10 parties. I will hold off on any motions to sever based on the
11 number of defendants here until we get closer to a trial date.
12 Let me get a sense from the parties, if the parties can give me
13 a sense, as to how long a trial would last in this case for the
14 first set of defendants, whoever is in that first set.

15 MR. MASIMORE: Your Honor, I think breaking it up into
16 two groups, I do think the government's presentation could
17 probably be expected to last three weeks.

18 THE COURT: Does defense counsel have an estimate at
19 this time?

20 MR. STAMPUR: I wouldn't venture a guess, Judge. I
21 don't know if anyone else had a comment.

22 THE COURT: Let me get in terms of the most time that
23 you think it might take for if there is a defense case.
24 Obviously the defense has no burden to put on a case. Given
25 the outer limits, what are we thinking at this time? Two

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1 weeks? Is an additional two weeks a fair estimate?

2 MR. STAMPUR: I think that would be a fair estimate.

3 THE COURT: Any other defense counsel have anything to
4 add in that regard?

5 MR. GREENFIELD: No, your Honor.

6 THE COURT: So we all think this trial shouldn't take
7 more than five weeks. Obviously things change, but at this
8 point we think that a trial for the first set of these
9 defendants shouldn't take more than five weeks; is that fair?

10 MR. LONDON: Yes.

11 MR. MASIMORE: I think sort of the way the government
12 would anticipate it coming in, I think a lot of these records
13 would probably come in through document custodians and we would
14 ask for a lengthy period of time to make arguments based on a
15 lot of this data and put in a summary. I think there are ways
16 we can streamline it. I don't think it will take more than
17 five weeks.

18 THE COURT: Again, I would like to perhaps try to get
19 a trial date set today just because we have so many defendants
20 and so many defense counsel so we can get some time blocked off
21 here. I will hold off on any motions to sever until we get
22 closer to a trial date. As I mentioned before the Second
23 Circuit said I cannot try all 13 defendants at once. That is
24 too many defendants to try at one time. It makes sense to
25 break this into two group. Before we talk about potential

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1 trial dates, let me find out from the defendants if there are
2 any issues regarding representations. That was something I
3 wanted to raise. Again, before we set trial dates, I want to
4 get a sense if there are applications for new counsel so we can
5 deal with that.

6 Again, as I indicated to the defendants the last time,
7 obviously if there are serious issues with you and your
8 attorney, I want to hear that. But be aware that that may
9 cause a delay in terms of trial and I know that it was
10 expressed by many defendants they did not want that. Let me
11 find out by a show of hands if there are any defendants who are
12 requesting new counsel at this time, people sitting in the jury
13 box?

14 I don't see any hands.

15 Individuals in the audience?

16 I don't see any hands either.

17 At this point it seems that the clients are at least
18 generally satisfied with their counsel. Let me get a sense
19 from counsel. Have counsel conferred about setting any
20 potential trial date yet?

21 MR. MASIMORE: No, your Honor.

22 MR. STAMPUR: What haven't done that, your Honor, only
23 because the government has informed us as to the massive amount
24 of discovery that is forthcoming. It is still premature to do
25 that. I just don't know when we are going to finish reviewing

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1 all this discovery. I have spent endless hours on the first
2 batch of discovery and nowhere near going through that and
3 Mr. Masimore has indicated there is another massive batch of
4 discovery that is soon to be delivered. I just thought it was
5 premature to do that.

6 MR. GREENFIELD: That being said, I agree with what
7 Mr. Stampur said. We're missing two of the lawyers. So while
8 we may among ourselves come up with a date, it may challenge
9 their trial schedules. Maybe we're better off waiting until
10 the next date, having everybody here, and at that point
11 addressing the issue of respective trial date.

12 THE COURT: I don't think I want to do that because
13 very well the next time we're here there may be counsel not
14 here. When you have multiple defense counsel, you have defense
15 counsel otherwise engaged in other trials or something else. I
16 want to certainly give the defense and I will give the defense
17 an adequate time of reviewing the discovery. I am not setting
18 a trial date a month from now obviously since the discovery is
19 not going to be totally turned over until at least three weeks
20 and it may take a little bit longer than that -- I shouldn't
21 say a little bit. It is going to take longer to make sure that
22 the discovery is available to the defendants at the facilities
23 and give counsel an opportunity to meaningfully review and
24 discuss it with their clients. I would like to set a trial
25 date so that we don't run into issues later in terms of the

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1 unavailability of counsel. Again, since it seems if in fact
2 all 13 defendants are going to trial, we have to do this in two
3 batches anyway. If the two attorneys who are not here cannot
4 do it at that time, then they will be in the second batch I
5 suppose.

6 So how is October the 6th? That is a date early in
7 the fall. That should give everyone plenty of time to review
8 discovery. How does October 6th work for counsel for the
9 government?

10 MR. MASIMORE: That would be fine, your Honor.

11 THE COURT: Counsel for defense?

12 MR. STAMPUR: Well, actually it is bad for me. I have
13 another case starting before Judge Stein. In addition, we
14 haven't discussed reviewing the discovery and filing motions.
15 I don't understand where the motions fit into that schedule. I
16 am assuming that we'll get this discovery, right, and then
17 we'll determine after we review it if it will take us more time
18 than just the three weeks to file appropriate motions. Anyway,
19 in response to that, I have an obligation November 10th so for
20 me it is a problem.

21 THE COURT: The obligation is when?

22 MR. STAMPUR: November 10th.

23 MR. GREENFIELD: I have trial starting in early
24 September, a case that will last into October.

25 THE COURT: The other counsel that are here is

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1 October 6. Does that work for the other counsel.

2 MR. LONDON: I am starting a trial before Judge Wood
3 on September 29th. That will run into that date.

4 MS. BAGLIEBTER: October 6th will work for us.

5 MR. LONDON: I could be available later in October.
6 Not the 6th because my trial is a week before and it could run
7 two weeks, but a little later in October I can be available.

8 THE COURT: I think Mr. Stampur you indicated --

9 MR. STAMPUR: November 10th. I was going to suggest
10 myself since I have a trial in early March if we can put my
11 client into January that would be preferable for me.

12 MR. GREENFIELD: I would join in that because I have a
13 September trial and I also have an August trial before Judge
14 Ramos. So two back-to-back trials I would do. I really would
15 like a January trial if I could have that.

16 THE COURT: Are the other counsel available in early
17 January as well?

18 MS. BAGLIEBTER: We're available in January.

19 MR. LONDON: I have a trial before Judge Sweet in
20 January. I don't know if it is going to go. It is
21 January 14th. Whether my client is going to go to trial is too
22 early to tell. He set the trial date sometime ago for
23 January 14.

24 THE COURT: Well, if we have three counsel who are
25 here present who are all available in January, and again for

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1 today's status conference I have broken this up into two
2 different batches, there very well should be counsel available
3 in January as well. It may seem appropriate to set a January
4 trial date.

5 Will counsel for the government be available in
6 January?

7 MR. MASIMORE: Yes, your Honor.

8 THE COURT: Tara, do we have a date in January?

9 THE DEPUTY CLERK: First week, Monday, January 5th.

10 THE COURT: And do we have five weeks after that?

11 THE DEPUTY CLERK: I don't have my other calendar.

12 THE COURT: That's fine. Let's schedule the trial for
13 January the 5th, 2015. Obviously we'll have some interim dates
14 between now and then to make sure discovery is progressing.
15 Let's check back in about two months. Let's get a date some
16 time in July.

17 THE DEPUTY CLERK: July 17th.

18 THE COURT: That should be fine. Are counsel
19 available on July 17th.

20 THE DEPUTY CLERK: It is already set, Judge, 11:00.

21 THE COURT: We'll come back Judge 17th at 11:00.

22 I want to make sure the defendants understand what is
23 going on here. We're going to move on as expeditiously as we
24 can. There is discovery that needs to be made available to and
25 your lawyers. Your lawyers may wish to make some motions

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1 regarding some of the discovery, which will take some time to
2 decide. We do have a trial date set for January 5th. We'll
3 adjourn this until July 17th at 11:00.

4 As indicated early, I find this is a complex case due
5 to the number of defendants and due to the voluminous nature of
6 discovery in this case. I further find that it is in the
7 interest of justice and interest of the defendants to exclude
8 time under the Speedy Trial Act from today's date to July 17th
9 so that counsel may review the voluminous discovery in this
10 case since the voluminous discovery may be made available to
11 the defendants so they can meaningfully review the discovery as
12 well. Having said that, we're adjourned to July 17th.

13 Anything further from the government?

14 MR. MASIMORE: No, your Honor. Thank you.

15 THE COURT: Anything else from defense?

16 MR. STAMPUR: Just one thing, Judge. I know it has
17 been discussed, and I don't want to be repetitious, but it
18 seems to me we have made every effort to allow the defendants
19 more time to review discovery. It is so voluminous two hours
20 on one day a week is a real problem. I know Mr. Masimore will
21 check into that with the MDC. I appreciate that.

22 THE COURT: I agree. We need to make sure that the
23 defendants have a meaningful opportunity to review discovery in
24 the facility. So let's have the parties work on that and let's
25 discuss that again on July 17th. If the parties are not able

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1 to resolve this with the facilities, let me know how I may be
2 of service.

3 MR. STAMPUR: Thank you, Judge.

4 THE COURT: Thank you. Have a good day.

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